

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE SAINT PAUL CITY COUNCIL

In re the Licenses held by Fred R. Sande
d/b/a Cosmic Charlie's

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

This matter was heard by Administrative Law Judge Beverly Jones Heydinger, on March 16, 2006, in Room 40A, Saint Paul City Hall – Ramsey County Courthouse, 15 West Kellogg Boulevard, Saint Paul, Minnesota. The hearing was held pursuant to a Notice of Administrative Hearing dated February 28, 2006. Rachel Gunderson, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, Saint Paul, Minnesota, 55102, appeared on behalf of the City's Office of License, Inspections and Environmental Protection (LIEP). Jimmy Sande, 189 North Snelling Avenue, Saint Paul, MN 55104, appeared on behalf of Cosmic Charlie's. The record closed March 16, 2006, at the close of the hearing. There were no additional submissions.

NOTICE

This report is a recommendation, not a final decision. The Saint Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions, and Recommendation.^[1] Pursuant to Saint Paul Legislative Code § 310.05 (c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact Shari Moore, City Clerk, City of Saint Paul, 170 City Hall, 15 W. Kellogg Blvd., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

STATEMENT OF THE ISSUE

Did the license holder of Cosmic Charlie's allow the display and consumption of alcoholic beverages without the required licenses in violation of Saint Paul Legislative Code § 310.06(b)(6)(a) and Minn. Stat. § 340A.414, subd. 1?

FINDINGS OF FACT

1. Fred R. Sande, 1561 Scheffer Avenue, Saint Paul, Minnesota, holds License ID # 20000000717 with the City of Saint Paul to operate Cosmic Charlie's restaurant at 189 Snelling Avenue North, Saint Paul, Minnesota.^[2]

2. Cosmic Charlie's is owned by Fred R. Sande and two of his sons. His son Jimmy Sande is an owner/manager.^[3]

3. Cosmic Charlie's has a patio seating area in the back of the building. During the summer months, a privacy fence surrounds the patio. At other times, one or two sections of fence might be removed, allowing access between the patio and the courtyard that serves several apartment buildings. The patio contains typical patio-type furniture suitable for a restaurant.^[4]

4. In the early morning hours of October 30, 2005, Cosmic Charlie's was closed. A large number of people were in the patio behind Cosmic Charlie's and in the adjoining courtyard. Between midnight and 2:00 a.m., a person became injured. Jimmy Sande and others took the victim to a couch on the patio area behind Cosmic Charlie's. Sande told people to call for help, then went into the business through the rear entrance to get towels and ice to attend to the victim. At that time, people were in and around the business.^[5]

5. Around 2:05 a.m., St. Paul Police Officer Zachary Nayman was sent to 189 Snelling Avenue North on a report of an assault. When he arrived, the front entrance of Cosmic Charlie's was closed, but he saw people in the alley leading to the back patio. He found fifteen to thirty people in the patio area and courtyard, and saw approximately fifty people inside the business. Most of those present were holding plastic cups of beer and appeared to be intoxicated.^[6]

6. Officer Nayman located the victim, who was lying on a couch in the patio area. The victim was semiconscious and appeared to be suffering from head trauma. The victim also appeared to be intoxicated, based on his demeanor and the smell of alcohol.^[7]

7. Officer Nayman could see inside the business, where someone appeared to be acting as a bartender in a makeshift bar area behind the serving counter. People inside the business were drinking. Officer Nayman did not see money being exchanged for beer. He asked a woman to go inside and find the owner.^[8]

8. At approximately the same time, an emergency medical team and Officer Eric Skog arrived on the scene. Officer Skog noticed people with plastic cups of beer leaving the building that housed the business. Some were leaving the business, while others appeared to be leaving from the adjacent apartment buildings. Officer Skog did not go in the business, but he could see people drinking inside. The crowd on the patio

and the people leaving the building were difficult to manage, and most appeared to be intoxicated.^[9]

9. Officers Skog and Nayman controlled the crowd while the medics prepared to remove the victim. They spoke to several witnesses about the assault while waiting for the owner to appear.^[10]

10. Jimmy Sande came out of the business and identified himself as an employee. His speech was slurred, and he was unsteady on his feet. When asked if the business had a license to serve alcohol, Sande responded that he did not know. The officers informed him it was after 2:00 a.m. and told him that everyone had to leave.^[11]

11. Mr. Sande was cooperative and immediately told everyone to leave.^[12]

12. On February 13, 2006, the St. Paul Office of License, Inspections and Environmental Protection sent a Notice of Violation to Cosmic Charlie's stating that Cosmic Charlie's had violated St. Paul Legislative Code 310.06(6)(a) (sic) and Minn. Stat. § 340A.414, subd. 1 by allowing the display and consumption of alcoholic beverages in the establishment without the required licenses.^[13] The notice indicated that a \$500 fine was being recommended.

13. Licensee requested a hearing on the violations pursuant to St. Paul Legislative Code §310.05.^[14] The matter was scheduled for a hearing on March 16, 2006.^[15]

14. Cosmic Charlie's has several licenses: a Restaurant (B) license received on March 31, 2003, which allows more than twelve seats; a Cabaret – Class A license received on November 15, 2000; and a Cigarette/Tobacco sales license received on March 31, 2000. The expiration date for all licenses is March 31, 2006.^[16]

15. Kristina Schweinler, LIEP Senior Licensing Inspector, recommended adverse action based on the police report she received regarding the October 30, 2005 incident. The City has a penalty matrix for imposing sanctions for violations of city ordinances. According to the matrix, the presumptive fine for a first offense is \$500.^[17] Cosmic Charlie's has no other violations.

16. Any Finding of Fact more properly termed as a Conclusion is hereby adopted as a Conclusion.

CONCLUSIONS

1. The Administrative Law Judge and the Saint Paul City Council have jurisdiction in this case.^[18]

2. The Applicant received timely and proper notice of the hearing, and the City has complied with all relevant substantive and procedural requirements of statute and rule.^[19]

3. The City has authority to deny, suspend, or revoke a license and to impose penalties for the violation of applicable statutes and rules.^[20] The presumptive penalty for a first violation is a \$500 fine.^[21]

4. The City has the burden of proving that the Licensee violated the applicable provisions of state law and city ordinance by a preponderance of the evidence.

5. No business establishment may allow the consumption or display of alcoholic beverages unless it has an on-sale intoxicating liquor license.^[22]

6. The City proved by a preponderance of the evidence that the Licensee allowed the display and consumption of alcoholic beverages in a business establishment without the required licenses in violation of St. Paul Legislative Code 310.06(b)(6)(a) and Minn. Stat. § 340A.414, subd. 1.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the City of Saint Paul impose an appropriate sanction against the Licensee.

Dated this 31st day of March, 2006.

/s/ Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Tape recorded one tape

MEMORANDUM

Officers Skog and Nayman testified that it appeared that beer was being consumed within Cosmic Charlie's. As many as fifty people were seen inside the business, and there was no apparent restriction against people entering from the patio area. An additional fifteen to thirty people were in and around the patio. Many people were drinking beer from plastic cups, and many were intoxicated and unruly.

Jimmy Sande testified that consumption occurred inside Cosmic Charlie's only after he opened the business to help someone who had been seriously injured. Sande's account is that the area was full of intoxicated people who wandered in and around the business while he was tending to the injured person. However, he did not produce any witnesses to support his account.

Mr. Sande acknowledged that a party was going on in the courtyard and on the outdoor patio which is part of the licensed premises. In addition, he did not dispute the officers' testimony that some of the partygoers entered Cosmic Charlie's when he opened up to get help for the injured person. Although Mr. Sande fully cooperated with the police, there was no evidence that he had tried to remove the partygoers from the premises until directed to do so.

Based on the evidence presented, the City has shown by a preponderance of the evidence that Cosmic Charlie's allowed alcohol to be displayed and consumed on the premises in violation of Minn. Stat. § 340A.414, subd. 1 and its licenses.

It should be noted that when the emergency arose, Mr. Sande sought emergency help for the injured person and fully cooperated with the officers to clear the area. The City may take this into account in determining the appropriate level of the fine.

B.J.H.

^[1] Saint Paul Legislative Code §§ 310.05 (c-1).

^[2] Ex. 2-2.

^[3] Test. Of Jimmy Sande; Ex. 4-1.

^[4] Test. of J. Sande.

^[5] *Id.*

^[6] Test. of Zachary Nayman; Ex. 1-3.

^[7] *Id.*

^[8] Test. of Z. Nayman.

^[9] Test. of Eric Skog.

^[10] Test. of Z. Nayman and E. Skog.

^[11] Ex. 1-3.

^[12] Test. of Z. Nayman and E. Skog.

^[13] St. Paul Legislative Code § 310.06(b)(6)(a).

^[14] Ex. 4-1.

^[15] Ex. 5-1.

^[16] Test. Of Kristina Schweinler; Senior Inspector, Office of License Inspections and Environmental Protection. Ex. 2-2.

^[17] St. Paul Legislative Code §310.05(m).

^[18] Saint Paul Legislative Code §§ 310.05, 310.06; Minn. Stat. § 340A.414.

^[19] See Minn. Stat. §§ 14.57 – 14.61; Saint Paul Legislative Code §§ 310.05; 310.06(a), (b)(6)(a).

^[20] Saint Paul Legislative Code § 310.06.

^[21] Saint Paul Legislative Code § 310.05(m).

^[22] Minn. Stat. § 340A.414, subd. 1.